

Rule 8, Ariz. R. Crim. P.

SPEEDY TRIAL — Continuances to allow counsel to prepare for trial

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When defense counsel who has been retained or appointed before trial seeks a continuance to allow himself time to prepare adequately for trial, the trial courts ordinarily grant the continuance. *See, e.g., State v. Mendoza*, 170 Ariz. 184, 186, 823 P.2d 51, 53 (1992); *but see State v. Waitkus*, 161 Ariz. 387, 388, 778 P.2d 1283, 1284 (App. 1989) [Court denied counsel's motions to continue based on trial preparation problems and inadequate pretrial investigation]. The courts will usually grant a defense counsel's motion to continue to prepare for trial even over the defendant's own speedy trial objection because denying accused's counsel sufficient time to prepare the case is denial of a substantial right. *Stirling v. State*, 38 Ariz. 120, 297 P. 871 (1931). In *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), both the prosecutor and defense counsel jointly requested a continuance to enable them to prepare for trial. Clark refused to waive the requested extension of time. He demanded that the trial begin immediately and offered to represent himself; alternatively, he wanted different counsel appointed for an immediate trial. *Id.* at ¶

43. The Court of Appeals stated:

We review a trial court's decision granting a continuance to allow counsel adequate time to prepare a case for an abuse of discretion. *State v. McWilliams*, 103 Ariz. 500, 501-02, 446 P.2d 229, 230-31 (1968); *State v. LeVar*, 98 Ariz. 217, 220-21, 403 P.2d 532, 535 (1965). "When defense counsel states that he is not adequately or fully prepared on the eve of trial, where the lack of preparation is not due to an absence of diligence on his part, a trial judge does not err in continuing the matter." *State v. Smith*, 146 Ariz. 325, 326-27, 705 P.2d 1376, 1377-78 (App.1985). This result does not change even if the defendant insists on an immediate trial. *Id.* at 327, 705 P.2d at 1378.

Thus, we will affirm a trial court's decision granting a continuance, despite a defendant's insistence on an immediate trial, when the facts indicate that defense counsel needs more time to prepare and no evidence exists of a lack of diligence by counsel.

Id. at ¶ 44.

However, a defendant cannot, on the day of trial, delay the trial by requesting to proceed *in propria persona*, and then demand additional time to prepare himself to proceed as his own attorney: "When a motion for self-representation made on the day of trial is coupled with a request for a continuance, it is not an abuse of discretion to deny the motion." *State v. Thompson*, 190 Ariz. 555, 557, 950 P.2d 1176, 1178 (App. 1997). Nor can a defendant demand a new attorney on the day of trial and demand additional time for new counsel to prepare. *State v. Jones*, 113 Ariz. 567, 558 P.2d 912 (1976). In *State v. Jones*, the defendant had discharged two previous attorneys before a third attorney was appointed to represent him. At a pretrial hearing, the third attorney moved to withdraw, citing the defendant's dissatisfaction with his representation. The trial court informed the defendant that he would have to retain other counsel before the court would allow appointed counsel to withdraw. Nevertheless, the defendant did not retain new counsel. On the day of trial, the defendant demanded that his appointed counsel be removed and requested an extension of time so that he could retain a fourth attorney or, in the alternative, so he could prepare to represent himself. The trial court told the defendant that the trial would proceed immediately and the defendant could either represent himself or proceed with his appointed counsel. The defendant decided to represent himself, and the trial court appointed a fourth attorney as advisory counsel. The defendant was convicted and on appeal, he argued that the trial court abused its discretion in denying him a continuance. The Arizona Supreme Court noted that the defendant's "tactics were both dilatory and obstructive," and held, "The court properly confronted

the defendant with the choice of either proceeding with his appointed counsel, who was prepared to defend, or proceeding without counsel." *Id.* at 571, 558 P.2d at 916.